

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Parcel Select
Parcel Select Contracts 12
Negotiated Service Agreement

Docket No. MC2016-37

Competitive Product Prices
Parcel Select Contract 12 (MC2016-37)
Negotiated Service Agreement

Docket No. CP2016-46

PUBLIC REPRESENTATIVE COMMENTS ON
REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD
PARCEL SELECT CONTRACT 12 TO COMPETITIVE PRODUCT LIST

(December 22, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2880.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Parcel Select Contract 12 to the competitive product list.² The Postal Service's request includes a Statement of Supporting Justification, certification of compliance with 39 U.S.C. § 3633(a), and copy of Governors' Decision No. 11-6. The Postal Service also filed (under seal) a contract related to the proposed new product, and supporting financial data.

According to the Postal Service, Parcel Select Contract 12 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). *Request* at 1. In addition, the Postal Service maintains that the prices and classification

¹ PRC Order No. 2880, Notice and Order Concerning Addition of Parcel Select Contract 12 to the Competitive Product List, December 16, 2015.

² Request of the United States Postal Service to Add Parcel Select contract 12 To the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 15, 2015 (Notice).

underlying the instant contract are supported by Governors' Decision No. 11-6.³ The contract subject of this docket shall replace the contract that is the subject of Docket Nos. MC2012-33 and CP2012-41. *Request* at 1.

COMMENTS

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Commission is required to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive. The Postal Service asserts that the contract is competitive and constrained by the existing market. *Request at Attachment D.*

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's rates for competitive products must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

The contract is expected to remain in effect until January 1, 2019, unless several other stipulations are met to terminate or renew the contract. *Contract (under seal)* at 6. The Postal Service provides no data to demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633 (a) during the second and third years of the contract. This concern is largely mitigated by the fact that the terms of the contract provide a formula for an annual adjustment in the negotiated rates that should permit revenues to cover costs during years 2 and 3.⁴ The Commission also has an

³ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

⁴ See Unredacted Contract Filed Underseal. September 18, 2015. Page 3.

opportunity to conduct an annual compliance review in its Annual Compliance Determination.

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, certificate of compliance, and non-public financial data accompanying the request. The Public Representative concludes that Parcel Select Contract 12 should be categorized as a competitive product and added to the competitive product list. In addition, based on the financial workpapers filed by the Postal Service, it appears that the contract is expected to generate sufficient revenues to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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